

m/045/022

TOGUT, SEGAL & SEGAL LLP
Bankruptcy Attorneys for the
The State of Utah Department of
Natural Resources
One Penn Plaza - Suite 3335
New York, New York 10119
(212) 594-5000
Neil Berger (NB-3599)
Todd E. Duffy (TD-9863)

RECEIVED

JUN - 6 2003

DIV. OF OIL, GAS & MINING

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
In re: :
: Chapter 11
: Case Nos. 01-14312 (REG)
MAGNESIUM CORPORATION :
OF AMERICA, INC., *et al.* : (Jointly Administered)
: Debtors. :
-----X

**STIPULATION AND ORDER MODIFYING THE
AUTOMATIC STAY IN FAVOR OF THE STATE OF UTAH,
DEPARTMENT OF NATURAL RESOURCES, DIVISION OF OIL GAS & MINING**

WHEREAS, on August 2, 2001 (the "Petition Date"), Magnesium Corporation of America, Inc. (the "Debtor") and the other above-captioned debtors (collectively with the Debtor, the "Debtors") each filed a voluntary petition for relief pursuant to Chapter 11, Title 11 of the United States Bankruptcy Code (the "Bankruptcy Code") in this Court; and

WHEREAS, on August 14, 2001, the Office of the United States Trustee for the Southern District of New York appointed an official committee of unsecured creditors in the Debtor's case; and

000961

WHEREAS, on or about July 30, 1990, the Debtor and the State of Utah, Department of Natural Resources, Division of Gas and Mining ("UDNR") entered into an agreement entitled "Reclamation Contract" (the "Agreement") pursuant to which the Debtor was permitted to conduct mining operations in a pre-designated area encompassing 176 acres known as Knolls Solar Evaporation Ponds located in Tooele County, Utah (the "Mining Area"); and

WHEREAS, pursuant to the Agreement and Utah Code Ann. § 40-8-1 ~~et~~ seq. (2003) (the "Mined Land Reclamation Act"), the Debtor was obligated to "shape, stabilize, revegetate, or treat the land affected [by the mining] in order to achieve a safe, stable, ecological condition and use which will be consistent with local environmental conditions"; and

WHEREAS, as required under the Mined Land Reclamation Act, the Debtor obtained a surety bond in favor of UDNR in the amount of \$115,000 to secure the Debtor's obligations to repair the Mining Area pursuant to the Agreement; and

WHEREAS, the purpose of the Bond is to compensate UDNR for any repair work that it may be required to perform if the Debtor fails to complete its duties under the Agreement; and

WHEREAS, pursuant to the Bond, UDNR retains the Bond until it determines that the Debtor has satisfactorily repaired the Mining Area; and

WHEREAS, UDNR is the only beneficiary under the Bond; and

WHEREAS, none of the Debtors are beneficiaries under the Bond and it has no interest in any proceeds that can be paid thereunder; and

WHEREAS, on January 9, 2002, UDNR filed a Request for Agency Action (the "Agency Action") to compel the Debtor to post an additional bond or to recommence its work at the Mining Area; and

WHEREAS, the Debtor responded and asserted that any request for Agency Action was a violation of the automatic stay; and

WHEREAS, on or about February 20, 2002, UDNR filed a secured proof of claim in this case in amount of \$6,200,000 for "mining reclamation plans and permits, lease and mineral royalties" (the "Proof of Claim"); and

WHEREAS, UDNR asserts that the Debtor is currently in breach of its obligations under the Agreement; and

WHEREAS, on January 17, 2003, the Ad Hoc Committee of Senior Noteholders in the Debtors' case moved for the appointment of a Chapter 11 Trustee; and

WHEREAS, on March 7, 2003, this Court entered an Order granting the motion to appoint a Chapter 11 Trustee; and

WHEREAS, on April 3, 2003, UDNR filed its Motion for an Order to modify the automatic stay (the "Stay Motion") to, among other things, commence and/or continue the Agency Action and to exercise its rights under the Bond; and

WHEREAS, on April 14, 2003, this Court entered an Order granting the application for the appointment of Lee E. Buchwald as Chapter 11 Trustee in these Chapter 11 Cases.

NOW, THEREFORE, IT IS HEREBY STIPUATED, CONSENTED TO AND AGREED by and between the parties hereto:

1. This Stipulation shall become effective upon entry of an Order approving the terms set forth herein (the "Effective Date").
2. The automatic stay pursuant to section 362(a) of the Bankruptcy Code in the Debtor's case is hereby modified to permit UDNR to exercise its rights under the Bond. Such relief includes, but is not limited to, UDNR commencing and/or continuing the Agency Action and recovering the proceeds of the Bond.
3. The Trustee and the Debtors shall not be required to, but may participate in the Agency Action commenced by UDNR, and none of the findings of fact, conclusions of law, decisions or judgments in such proceedings will act as any collateral estoppel or *res judicata* bar to any objection by the Debtors, the Trustee or other party-in-interest to any claims that may be asserted by UDNR against the Debtors' estates. Notwithstanding the foregoing, UDNR may obtain findings of fact, conclusions of law, decisions or judgments that permit it to exercise its rights under the Bond. UDNR will serve all documents, pleadings, submissions or decisions issued or submitted in the Agency Action directly upon the Trustee.

4. UDNR's total claim shall be reduced by any amounts recovered by UDNR in connection with the Bond.

5. The ten day stay provided by Rule 4001(a)(3) of the Federal Rules of Bankruptcy Procedure be, and it hereby is, waived.

6. This Stipulation shall be governed by, interpreted and enforced by the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court") in accordance with the laws of the State of New York.

7. Neither this Stipulation nor any of its terms may be modified, altered, amended, or waived, except in a writing signed by all of the parties hereto.

8. This Stipulation shall be binding upon and inure to the assigns, representatives, heirs, and successors of the parties hereto.

9. This Stipulation shall be null and void if it is not approved by the Bankruptcy Court. In such event, nothing contained herein shall constitute or be construed to constitute a waiver of any right, claim or defense in favor of the parties hereto, and this Stipulation shall not be used in any pleading filed in the Bankruptcy Court or any other forum for any purpose whatsoever.

10. This Stipulation may be executed in counterparts, including facsimile counterparts, all of which when taken together will constitute one original agreement under the Federal Rules of Bankruptcy Procedure.

DATED: New York, New York
May 12, 2003

STATE OF UTAH, DEPARTMENT OF
NATURAL RESOURCES, DIVISION OF OIL,
GAS AND MINING,
By their Bankruptcy Attorneys,
TOGUT, SEGAL & SEGAL LLP
By:

/s/ Neil Berger
NEIL BERGER (NB-3599)
A Member of the Firm
One Penn Plaza
New York, New York 10119
(212) 594-5000

[Concluded on Following Page]

DATED: New York, New York
May 12, 2003

Lee E. Buchwald, Chapter 11 Trustee
Magnesium Corporation of America

By:

/s/ Lee E. Buchwald
LEE E. BUCHWALD
420 Lexington Avenue, Suite 300
New York, New York 10170-0399
(212) 297-6168

SO ORDERED on this 13th day of May, 2003
In New York, New York

S/Robert E. Gerber
HONORABLE ROBERT E. GERBER
UNITED STATES BANKRUPTCY JUDGE